REMARKS

Claims 1-20, 42 and 44 are currently pending. Claims 14 and 42 are herein amended to correct a minor error in each claim. No new matter has bee introduced into the pending case.

By way of background, Applicants' attorney timely responded to the Official Action dated September 8, 2004. However, in that Response, he failed to respond to the Examiner's rejection of claims 1-3, 5-9, 14-19, 42 and 44 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,993,825 (Abe et al.). The failure to respond specifically to this rejection was an oversight. Applicants' attorney does note, however, that the amendment (REMARKS) stated that "[a]pplicants respectfully traverse all pending grounds for rejection." Further, Applicants' attorney spoke with Examiner Farah on August 15, 2005 and explained that the failure to address with specificity the §102(b) rejection based on Abe et al. was unintentional, and proposed filing a Supplemental Amendment and Response, primarily to provide the Examiner with an opportunity to consider the Applicants' grounds for overcoming the §102(b) rejection over Abe et al. The Examiner expressed a willingness to consider the paper which is being filed via facsimile both officially as well as a courtesy copy to the Examiner.

With respect to the previously unaddressed rejection under §102(b) over Abe et al., the Examiner's position is understood to be set forth on page 4 of the September 8, 2004 Official Action, i.e. the last two paragraphs preceding the §103 rejection. Further the rejection of Claim 4 under 35 U.S.C. §103(a) over U.S. Patent No. 5,549,597 in view of Abe et al. and the rejection of Claims 11, 12 and 13 under 35 U.S.C. §103(a) over U.S. Patent No.

5,549,597 in view of Abe et al. are discussed on page 5 of the Official Action dated September 8, 2004. Applicants respectfully traverse each of these grounds for rejection; and in so doing notes that if Claim 1 is found patentable over Abe et al., all claims which are dependent (directly or indirectly) on Claim 1, be likewise be found patentable. Applicants note further, with appreciation, that the Examiner has allowed Claims 14-20, 42 and 44; and found Claim 10 to be conditionally allowable.

With regard to the Abe et al. reference, Applicants respectfully point out that a reading of this reference might be seen to disclose a device for photographing eye movement in which a static target adjacent a window is formed by a "cross-shaped target group" of LEDs arranged in two lines 9x, 9y. The camera 1A photographs the eye through the window. In fact, however, the target group in Abe et al. is designed to be "moveable" by switching the LEDs on and off in a sequence that forms a moving, i.e. dynamic, target: the eye follows the moving target and is photographed as it does so. See in particular column 4, lines 23-27, and column 5, lines 45-53 of U.S. Patent No. 5,094,321.

A fixation target designed to alter the patient's gaze is, of course, completely antithetical to the requirements for refractive laser surgery. Claims 1 and 14 have been amended to specifically recite refractive laser surgery, and fixation target means comprising:

> "light emitting means that when activated defines at least two intersecting substantially mutually perpendicular elongate components each having a location and orientation that remains fixed during said surgery of the eye, whereby to limit rotation of the ocular globe of the patient's eye during said surgery".

The Examiner's §103 rejections both rely on Abe and, therefore, on the same incorrect assumption of the static form of the Abe target. Additionally, the fixation target in

Shimmick rotates, for the purpose of measuring the astigmatism axis from patient feedback. It does not measure, nor reduce rotation of the ocular globe of the eye, and indeed, in our client's view, could well exacerbate such rotation.

For the reasons discussed above, Applicants respectfully seek the Examiner's reconsideration of the grounds for rejection premised on Abe et al.

Applicants note that an Official Action dated June 2, 2005 has issued; and are of the opinion that if the Examiner had had the benefit of the arguments as to why Abe et al. is not anticipatory of the subject matter as amended in Claim 1, he would not have maintained the §102(b) (and §103(a)) rejections over Abe et al. It is Applicants' desire that if the Examiner is convinced of the patentability of Claim 1 over Abe et al., the "final" rejection of June 2, 2005 can be withdrawn and the pending claims passed to allowance.

Applicants' attorney would, of course, welcome a telephone call if there are any questions in this regard.

Respectfully submitted,

By: _____

Bradley B. Geist
Patent Office Reg. No. 27,551
30 Rockefeller Plaza
44th Floor
New York, NY 10112

(212) 408-2562
Attorney for Applicants